IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Patent Application

Applicants(s): Bauer et al.
Case: 13-7-4
Serial No.: 09/488,182
Filing Date: January 20, 2000
Group: 2666

> I hereby certify that this paper is being deposited on this date with the U.S. Postal Service as first class mail addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.
>
> Signature _____ Date: <u>October 5, 2004</u>

Title: Method and Apparatus for Overload Control in Multi-Branch Packet Networks

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TRANSMITTAL OF REPLY BRIEF

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Submitted herewith are the following documents relating to the above-identified patent application:

(1) Reply Brief (original and two copies).

In the event of non-payment or improper payment of a required fee, the Commissioner is authorized to charge or to credit **Avaya Deposit Account No. 50-1602** as required to correct the error. A duplicate copy of this letter and two copies of the Reply Brief are enclosed.

Respectfully,

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Date: October 5, 2004

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    Case: 13-7-4
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10   Examiner: Ronald B. Abelson

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20   Alexandria, VA 22313-1450

Sir:

    Appellants hereby reply to the Examiner's Answer, mailed August 6, 2004, in

25 an Appeal of the final rejection of claims 1 through 12 in the above-identified patent

application.

REAL PARTY IN INTEREST

    A statement identifying the real party in interest is contained in Appellants'

30 Appeal Brief.

RELATED APPEALS AND INTERFERENCES

    A statement identifying related appeals is contained in Appellants' Appeal

Brief.

35

STATUS OF CLAIMS

A statement identifying the status of the claims is contained in Appellants' Appeal Brief.

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STATUS OF AMENDMENTS

A statement identifying the status of the amendments is contained in Appellants' Appeal Brief.

SUMMARY OF INVENTION

10 A Summary of the Invention is contained in Appellants' Appeal Brief.

ISSUES PRESENTED FOR REVIEW

A statement identifying the issues present for review is contained in Appellants' Appeal Brief.

15

GROUPING OF CLAIMS

The rejected claims stand and fall together.

CLAIMS APPEALED

20 A copy of the appealed claims is contained in an Appendix of Appellants' Appeal Brief.

ARGUMENT

In the Examiner's Answer, the Examiner maintains that Cruickshank is
25 inherently monitoring congestion by monitoring parameters such as packet delay, packets dropped, and throughput. The Examiner asserts that Applicants disclose monitoring packet loss and packet delay in order to set the congestion indicator flag ("the flag is set to 'Y' and the call is routed through the PSTN;" FIG. 3B: box 136 "Y").

Applicants note that the independent claims emphasize that a *congestion*
30 *indicator is maintained* or a *congestion indicator flag is set;* Cruickshank, on the other hand,

simply takes QoS measurements. Applicants also note that, contrary to the Examiner's assertion, Cruickshank does not disclose or suggest setting a "flag" in regard to box 136, but defines two different paths in a flowchart which may be followed in response to a question of whether the QoS is below a threshold (as would be apparent to a person of ordinary skill in

5   the art).

The Examiner also claims that QoS measurements are indicators of congestion, noting, for example, that Applicants have disclosed utilizing measurements such as packet delay and packet loss as an indication of congestion. In addition Applicants have argued in the Appeal Brief, such measurements can fail to indicate congestion when it exists,

10   and can falsely indicate congestion when it does not exist. While such measurements may be relevant in determining whether congestion is present; there is no suggestion in Cruickshank to maintain a "congestion indicator status."

Independent claim 1 requires *"maintaining a congestion indicator status* associated with each path in said primary network, said congestion indicator status indicating

15   whether said path is *congested,"* independent claims 4 and 10 require *setting "a congestion indicator flag* associated with said path if said congestion data indicates that a path associated with said packet telephony communication is *congested,"* and independent claim 7 requires "collecting   *congestion   data*   associated   with   a   packet   telephony communication;…and reporting said *congestion data* to a centralized server that performs

20   overload control, whereby said centralized server evaluates said congestion data to determine if a path associated with said packet telephony communication is *congested."* Thus, Applicants have emphasized that a *congestion indicator status* is maintained, a *congestion indicator flag* is set, or *congestion data* is collected and reported in the present invention.

Thus, Cruickshank does not disclose or suggest maintaining a congestion

25   indicator status associated with each path in said primary network, said congestion indicator status indicating whether said path is congested, as required by independent claim 1, does not disclose or suggest setting a congestion indicator flag associated with said path if said congestion data indicates that a path associated with said packet telephony communication is congested, as required by independent claims 4 and 10, and does not disclose or suggest

30   collecting congestion data associated with a packet telephony communication;…and

3

reporting said congestion data to a centralized server that performs overload control, whereby said centralized server evaluates said congestion data to determine if a path associated with said packet telephony communication is congested, as required by independent claim 7.

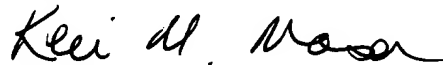5   Conclusion

The rejections of the independent claims under section §102 in view of Cruickshank and Adelman et al., alone or in combination, are therefore believed to be improper and should be withdrawn. The rejected dependent claims are believed allowable for at least the reasons identified above with respect to the independent claims.

10   The attention of the Examiner and the Appeal Board to this matter is appreciated.

Respectfully,

15   Date: October 5, 2004   Kevin M. Mason
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